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CHARLES ELMORE CROPLEY
CLERK

No. 40

In the Supreme Court of the United States

OCTOBER TERM, 1945

RECONSTRUCTION FINANCE CORPORATION, SUCCESSOR TO DEFENSE PLANT CORPORATION, APPELLANT

v.

COUNTY OF BEAVER, PENNSYLVANIA

APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR RECONSTRUCTION FINANCE CORPORATION

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OPINIONS BELOW

The opinion of the Court of Common Pleas of Beaver County, Pennsylvania (R. 53–77), is reported in the Beaver County Legal Journal, Volume 6, page 52. The opinion of the Supreme Court of Pennsylvania (R. 83–88) is reported in 350 Pa. 520, 39 A. (2d) 713.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered October 31, 1944 (R. 88). A petition for reargument filed by Defense Plant

Corporation (R. 89–95) was denied November 17, 1944 (R. 95). The petition for allowance of an appeal was filed on January 26, 1945 (R. 96) and the order of the Supreme Court of Pennsylvania allowing the appeal was entered February 2, 1945 (R. 97–98). This Court, by order of March 26, 1945, noted probable jurisdiction (R. 100). The jurisdiction of this Court rests on Section 237 (a) and (c) of the Judicial Code, as amended.

Section 237 (a), as amended, permits an appeal from a state court in cases where there "is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * or laws of the United States, and the decision is in favor of its validity." The Section plainly applies whether it is contended that a state law contravenes the Constitution or a federal statute. Thus appellee's suggestion (in its Statement Opposing Jurisdiction and Motion to Dismiss or Affirm) that jurisdiction may be lacking under Section 237 because the scope of a federal statutory exemption is in issue and not a "question of constitutional immunity", is groundless. The issue here is whether the Pennsylvania statute, as applied to the facts of this case, is in conflict with the federal statute, and, if so, unconstitutional. Cf. *Wilson v. Cook*, No. 328, decided March 4, 1946. In any event, the Court may treat the appeal papers as a petition for certiorari under Section 237 (c), and the issue presented is

clearly important enough to warrant the granting of the writ. Cf. *United States* v. *County of Allegheny*, 322 U. S. 174.

QUESTIONS PRESENTED

(1) Whether a federal statute allowing the states to tax "real property" but not "personal property" of the Reconstruction Finance Corporation and Defense Plant Corporation permits the taxation of machinery installed at a manufacturing plant, when such machinery, though necessary to the manufacturing operations, was easily removable without damaging the land or buildings and was not intended to be a permanent attachment to the freehold.

(2) Whether Congress intended the meaning of "real property" in Section 10 of the Reconstruction Finance Corporation Act, as amended, to depend upon the law of the locality in which the property involved was located.

STATUTES INVOLVED

Section 10 of the Reconstruction Finance Corporation Act of January 22, 1932, 47 Stat. 5, 9, as amended by Section 3 of the Act of June 10, 1941, 55 Stat. 248 (15 U. S. C., Supp. IV, Sec. 610), reads as follows (1941 additions are in italics):

> Sec. 10. Any and all notes, debentures, bonds or other such obligations issued by the corporation shall be exempt both as to principal and interest from all taxation (except

surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except as provided in section 1 (a) of the Public Debt Act of 1941. The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. *The exemptions provided for in the preceding sentence with respect to taxation (which shall, for all purposes, be deemed to include sales, use, storage, and purchase taxes) shall be construed to be applicable not only with respect to the Reconstruction Finance Corporation but also with respect to (1) the Defense Plant Corporation, the Defense Supplies Corporation, the Metals Reserve Company, the Rubber Reserve Company, and any other corporation heretofore or hereafter organized or created by the Reconstruction Finance Corporation under section 5d of this Act, as amended, to aid the Government of the United States in its national-defense program, (2) The RFC Mortgage Company, the Federal National Mortgage Association,*

and any other public corporation heretofore or hereafter organized by or at the instance of the Reconstruction Finance Corporation, and (3) the Disaster Loan Corporation, and any other public corporation which is now or which may be hereafter wholly financed and wholly managed by the Reconstruction Finance Corporation. Such exemptions shall also be construed to be applicable to the loans made, and personal property owned by the Reconstruction Finance Corporation or by any corporation referred to in clause (1), (2) or (3) of the preceding sentence, but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes.

The Pennsylvania Act of May 22, 1933, P. L. 853, as amended by the Act of July 2, 1941, P. L. 219 (72 Purdon's Pa. Stat. (1936) 5020–201) reads as follows:

SECTION 201. Subjects of Taxation Enumerated.—The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate:

(a) All real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tanyards, fisheries, and

ferries, wharves, and all other real estate not exempt by law from taxation.

STATEMENT

In 1941 Defense Plant Corporation, a corporation created by Reconstruction Finance Corporation pursuant to Act of Congress, acquired certain land in Borough Township, Beaver County, Pennsylvania (R. 7). Thereafter it constructed buildings on the property, caused machinery to be installed therein, and leased the establishment thus created and equipped to Curtiss-Wright Corporation to enable that corporation to perform its war contracts with the United States Government for the manufacture and furnishing of aircraft propellers (R. 7).

In 1942 the Assessor for Borough Township, Beaver County, Pennsylvania, assessed the property for the 1943–1945 triennial period, and included in the assessment the item of machinery assessed at $388,000 (R. 8). The assessment was made under the state statute set forth above.

In March, 1943, Defense Plant Corporation appealed to the County Commissioners of Beaver County, sitting as a Board of Revision, from the assessment made upon the machinery, but the Commissioners sustained the assessment and dismissed the appeal (R. 8). Thereupon Defense Plant Corporation took an appeal to the Common Pleas Court of Beaver County alleging in its petition (R. 3–6) that its machinery and equipment were personal property, not real property, that the action of the assessor and of the board of revision in assessing such machinery and equipment "denies the validity of Section 10 of the Reconstruction Finance Corporation Act as amended by the Act of June 10, 1941 aforesaid", and that the Pennsylvania statutes for taxation of real estate, "to the extent that they impose taxes on such machinery and equipment, are invalid on the ground that they are repugnant to the Constitution of the United States, to wit: the immunity of the United States and its instrumentalities from taxation by states or political subdivisions thereof and are repugnant to Section 10 of the Reconstruction Finance Corporation Act, as amended."

After introduction of an agreed statement of facts (R. 6–21), presentation of testimony, and argument, the court, on June 7, 1944, entered an order dismissing the appeal and approving the assessment (R. 2). On June 26, 1944, such order was reaffirmed as the order of the Common Pleas Court *en banc* (R. 3).

Defense Plant Corporation thereupon took a further appeal to the Supreme Court of Pennsylvania. On October 31, 1944, that court entered judgment affirming the order of the Court of Common Pleas (R. 83–88). A petition for rehearing was denied November 17, 1944 (R. 95).

By Public Law 109 of the 79th Congress, approved June 30, 1945, c. 215, Defense Plant Cor-

poration was dissolved and all its functions, powers, duties, authority, assets and liabilities were transferred to Reconstruction Finance Corporation. A motion filed with this Court on April 3, 1946, pursuant to Section 2 of said Public Law 109, prays that Reconstruction Finance Corporation be substituted as the appellant herein.

The case turns on the facts, which are undisputed, relating to the assessed machinery. The machinery is listed in an exhibit found at R. 51–52. The machines include 10-ton cranes, milling, cutting, and grinding machines, lathes, presses, shapers, saws, electric trucks, and "small grinders and other hand tools." Most of the machinery is not attached to the building at all, but is held in place by its own weight. Other portions are attached by screws and bolts which are easily removable. All of the machines can be removed without damage to the building or to the machines. (R. 33–34, 38, 45, 57.)

The lease by Defense Plant to Curtiss-Wright (R. 11–21) provided (R. 14):

> ELEVEN. Title to the site, buildings, and Machinery to be acquired hereunder shall, unless and until the same shall be transferred by Defense Corporation in accordance with the provisions hereof, be vested in Defense Corporation, *and such Machinery shall remain personalty notwithstanding the fact it may be affixed or attached to realty.* [Italics supplied.]

The lease contained an express provision for the transfer of the machinery to other plants, as follows (R. 19):

> NINETEEN. Lessee may use such items of Machinery as it may designate in writing to Defense Corporation, in connection with the manufacture and furnishing of aircraft propellers and other products for the Government *in any other plants of Lessee.* Lessee may also, with the written approval of Defense Corporation and the War Department, *lease or lend to any suppliers any item of Machinery,* the lease or loan of which it may deem necessary for the performance by Lessee of its contracts with the Government. [Italics supplied.]

The lease further provided that on its termination the lessee should place lessor in possession of the site, buildings, and machinery (R. 18–19):

> * * * and *if any of the Machinery shall be then located elsewhere than in the additional plant to be provided hereunder,* Defense Corporation shall, in addition, have the right to remove, and upon the written request of Lessee, shall promptly remove, at its own expense, such Machinery, and if such removal shall not take place within sixty (60) days after such request, Lessee may remove the Machinery and place it in storage for the account and at the expense of Defense Corporation, and Defense Corporation shall have corresponding rights and Lessee shall have corresponding rights

and obligations with respect to removal and storage of such machinery not owned by Defense Corporation as may then be located in the additional plant to be provided hereunder. [Italics supplied.]

The undisputed testimony shows that the original machinery installed in the plant had been transported from a plant in which it had previously been used for manufacturing propellers, without the prior plant being damaged by the removal (R. 32–33). The machinery is moved around freely, without any damage of consequence, in its present location (R. 34). In eighteen months probably 90% of it has been rearranged (R. 34). Approximately 40% had been replaced. The effect upon the freehold of these removals was stated to be "none whatsoever". (R. 34.) These changes resulted from "change of design or improvements in such designs" and "obsolescence" (R. 34), and because "We find it necessary to streamline our production lines about once a year, in order to keep up with changes and developments concerning the operation of manufacturing the hollow propeller blades" (R. 35).

It was testified that "all of the installations are designed with a view towards flexibility; the electrical connections to the machines are merely made by a plug into the 'bus' duct above the machine" (R. 35). Very frequently machinery had been interchanged with other plants (R. 36). The machines are moved out at the rate of one

or two a week; "in fact, in three weeks time from now we are going to move forty-five machines out" (R. 44). The machinery is moved from one plant to another in order "to take advantage of machinery that is available, if it is critical; not to have to go out and buy it" (R. 45).

All of the machinery, of course, was necessary to the manufacturing of propellers (R. 44, 57). But the building is a "typical manufacturing building" and is suitable for "almost any manufacturing type of job which has to be done, excepting something that requires a special type of building" (R. 37).

On these facts, the Court of Common Pleas held that Congress intended that whether machinery was "real property" within the meaning of Section 10 was to be determined by the law of the state, and that under Pennsylvania law the machinery was taxable as real estate (R. 77). The Pennsylvania Supreme Court, in affirming, held that the machinery was taxable as real estate whether the law in the assessing district or "the prevailing view among the states" be applied (R. 88). The court noted that in some taxing districts the Pennsylvania statutes specifically provide that machinery is not to be assessible as real estate (R. 88).

SPECIFICATION OF ERRORS TO BE URGED.

The assignments of error are set out at R. 96–97. The Supreme Court of Pennsylvania erred:

1. In holding that the Act of May 22, 1933, P. L. 853, Art. II, including Section 201 thereof, as amended, is constitutional in so far as it purports to authorize the assessment for taxation of machinery owned by Defense Plant Corporation.

2. In holding that the assessment for taxation, as part of the real estate, of machinery owned by Defense Plant Corporation and used in the operation of an industrial plant owned by said Corporation is not repugnant to the Constitution and Laws of the United States.

3. In holding that the Act of Congress approved June 10, 1941, c. 190, Section 3, 55 Stat. 248 (U. S. C., Supp. IV, Title 15, § 610) was to be construed as waiving with respect to machinery owned by Defense Plant Corporation the constitutional immunity otherwise enjoyed by such agency from state and local taxes.

4. In affirming the order of the Court of Common Pleas of Beaver County, which order confirmed the assessment of machinery owned by Defense Plant Corporation.

SUMMARY OF ARGUMENT

A

Congress did not intend the waiver of immunity from state taxation for "real property" to extend to portable manufacturing machinery never meant to be a permanent accession to the building in which it was placed. The history of

the waiver, stemming from the provision for national banks in 1864, indicates that Congress meant the waiver to extend only to land and buildings, and to attachments in a narrow sense. The historical use of the waiver for the real estate of financial institutions exclusively, the early cases excluding bank fixtures in the same category as the machines involved here, the absence of any other attempt during three-quarters of a century to extend the waiver beyond real estate in the narrow sense, the separate reference to "lands", "plants" and "equipment, supplies, and machinery" in the 1940 Act, the addition of an express prohibition against the taxation of personal property in the 1941 Act by way of reaffirmation of the prior understanding, and the deliberate limitation of a 1941 amendment to buildings, all support this interpretation of the Act.

B

Furthermore, the purpose of the waiver is to prevent the depletion of a locality's tax resources which occurs when the United States becomes the owner of land. This policy does not apply to portable machinery, which is frequently brought into the taxing district by the United States. To permit state taxation of such machines does more than preserve the local revenues against depletion; it allows the locality to gain at the Nation's expense.

C

The same result follows if one applies the commonly accepted tests by which it is determined whether a chattel is to be treated as part of the realty. Despite variation in the weight given to the other factors, such as the method of annexation, the courts in this country have with substantial uniformity—apparently except for Pennsylvania—held that whether a chattel becomes a fixture depends primarily on whether it is intended to be permanently affixed to the land. Under this test the machinery here involved, which the parties correctly contemplated from the beginning would frequently be removed, transferred and replaced, and which is readily movable without damage to the building or to the machinery itself, would not lose its status as personal property. The Pennsylvania doctrine, as here applied, which seems to mean that all machines necessary to a business carried on in an establishment form part of the real estate irrespective of whether they were meant to be a permanent accession to the land, is entirely out of line with the general understanding, and Congress undoubtedly legislated with the latter in mind. The same test is applied by the states in tax as in other cases. A very few states statutes expressly subject machinery to the real property tax, but in only one of these states could such a provision apply to the property of the United States.

D

We believe that Congress intended the waiver to extend only to land, buildings, and such fixtures as are essential to a building's operations, such as the heating plant. In any event, Congress did not have in mind a conception broader than the accepted meaning of "real property" throughout the country.

In addition to indicating what Congress meant by "real property", the above considerations show that Congress did not mean to allow "real property" to be defined by the local law of each state or taxing district. The normal assumption is that Congress intends its laws to operate uniformly throughout the nation, and a great many cases show that this rule is given effect when a Federal statute embodies a common law term. Nothing in its background, history, or language suggests that the waiver in the RFC Act was meant to be dependent upon state law. To permit states or localities to define "real property" so as to include what would normally be regarded as personalty would defeat the Congressional purpose, explicitly set forth both in the affirmative and in the negative, that only real and not personal property be subject to state taxation.

ARGUMENT

THE MACHINERY OF DEFENSE PLANT CORPORATION IS NOT TAXABLE BY THE STATES

It is conceded that the property of Defense Plant Corporation is exempt from state taxation

except to the extent that Congress has waived the exemption. See *Maricopa County* v. *Valley National Bank*, 318 U. S. 357. The case accordingly turns upon the meaning of Section 10 of the Reconstruction Finance Corporation (RFC) Act, which, as amended, permits the states to tax the "real property" but not the "personal property" of appellant.

This case involves an attempt by a Pennsylvania county[1] to tax the same type of machinery as was involved in *United States* v. *County of Allegheny*, 322 U. S. 174. The cases differ, however, in that the machinery in the *Allegheny* case was owned by the United States through the War Department, and no Federal law allows the states to tax the "real property" of the War Department. The *Allegheny* case thus did not present the issue now before the Court.

It is our position that when Congress waived the exemption from state taxation for the real property of the RFC and its affiliates, it intended to permit the states to tax the land and buildings and those fixtures which are so integrated with the buildings as to be uniformly, or, at most, generally, regarded as real property. The machinery in-

[1] The court below noted that in parts of Pennsylvania machinery was not taxable as real property. (R. 88.) Only six of Pennsylvania's counties have sought to assess the machinery of Defense Plant or RFC.

question here clearly is not real property under that criterion. Furthermore, we submit, Congress did not intend the meaning of "real property" under the Act to vary with the law of each state or taxing district. To permit states or localities to define the term so as to include what would normally be regarded as personalty would defeat the Congressional purpose, explicitly set forth both in the affirmative and in the negative, that only "real property" and not "personalty" be subject to state taxation.

The questions as to whether Congress intended state law to govern, and if not, what "real property" was intended to mean, are, of course, not the same; but the same material manifests the legislative intent as to both points. We shall accordingly first consider the pertinent material without differentiating between the two issues.

A. THE HISTORY OF THE EXEMPTION

The phrases "real property" and "personal property" are not defined in the RFC Act. But light is thrown on their meaning by their history and their derivation.

The exemption of real estate from the general rule of immunity for Federal property did not originate in the RFC Act. Prior to 1941 a number of statutes, all of which were concerned

with Federal financial institutions, contained similar provisions.[2] The forerunner of these was the Act of June 3, 1864, 13 Stat. 99, 111 (12 U. S. C. § 548) authorizing the creation of national banking associations. Under that Act, subsequently embodied in R. S. 5219, the shares of national banks were subjected to state taxation at rates no higher than those imposed upon competitive institutions in the states. As to real property R. S. 5219 provides that:

> Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

We have been unable to find anything in the legislative history of the 1864 Act throwing light upon the meaning of the quoted provision, which was only an insignificant item in a long measure devoted to financing the Civil War. The decisions under R. S. 5219 do not contain any considered discussion of the breadth of the real property exemption. But various state and lower

[2] These laws are listed in House Doc. No. 216, 78th Cong., 1st sess., *Federal Contributions to States and Local Governmental Units with Respect to Federally Owned Real Estate*, p. 39. See note 7, *infra*, p. 20.

Federal courts have held that bank "fixtures", "safes and fixtures", "safe and furniture", and even "machinery and equipment", are personal property and hence exempt from taxation. The "safes and fixtures", which presumably were removable but essential to the bank's business, would seem to be indistinguishable from the machinery involved in this case insofar as their status as "real property" is concerned.

The subsequent statutes on the subject, including the RFC Act, were presumably based on the clause in R. S. 5219, which had been construed not to reach movable but necessary chattels.

The next statute embodying the exception was the Federal Reserve Act of 1913 (38 Stat. 251, 258, 12 U. S. C. § 531) Section 7 of which provided that "Federal Reserve Banks * * * shall be exempt from Federal, State, and local taxation, except taxes upon real estate". The history of that Act contains no explanation of the exception for real property. From then on, as Federal financial activities expanded, the provision for tax exemption except for real property was apparently included

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[3] *San Francisco* v. *Crocker-Woolworth National Bank*, 92 Fed. 273 (C. C. N. D. Cal.); *First National Bank* v. *San Francisco*, 129 Cal. 96.

[4] *People* v. *National Bank of D. O. Mills & Co.*, 123 Cal. 53.

[5] *National State Bank of Oskaloosa* v. *Young*, 25 Ia. 311.

[6] *Bank of California* v. *King Co.*, 16 F. Supp. 976 (W. D. Wash.).

as a matter of course in twelve other laws.[7] The REC Act of 1932 adopted the customary language without discussion of the point in Congress.

Some of the acts contained variations which are significant in that they demonstrate Congressional awareness of and attention to the problem. Thus two statutes authorized the taxation both of real and tangible personal property.[8] In addition, in many statutes Congress has made other provision for contributions to the states in lieu of taxes.[9]

So far as we have been able to ascertain the only decisions under any of these statutes with respect to the meaning of the real estate exemption

[7] Federal Land Banks and National Farm Loan Associations, 39 Stat. 380, 12 U. S. C. §§ 931, 933 (1916); National Agricultural Credit Corporation, 42 Stat. 1469, 12 U. S. C. § 1261 (1923); Reconstruction Finance Corporation, 47 Stat. 9, 15 U. S. C. § 610 (1932); Federal Home Loan Banks, 47 Stat. 735, 12 U. S. C. § 1433 (1932); Home Owners Loan Corporation, 48 Stat. 129, 12 U. S. C. § 1463c (1933); Federal Deposit Insurance Corporation, 48 Stat. 168, 12 U. S. C. § 264 (p) (1933); Federal Farm Mortgage Corporation, 48 Stat. 347, 12 U. S. C. § 1020f (1934); Federal Housing Administration, 48 Stat. 1252, 12 U. S. C. § 1714 (1934); National Mortgage Associations, 48 Stat. 1255, 12 U. S. C. § 1722 (1934); Federal Savings & Loan Insurance Corporation, 48 Stat. 1256, 12 U. S. C. § 1725c (1934); Commodity Credit Corporation, 52 Stat. 108, 15 U. S. C. § 713a–5 (1938); War Housing Insurance, 55 Stat. 61, 12 U. S. C., Supp. IV § 1749 (1941).

[8] 48 Stat. 267, 12 U. S. C. § 1138c (1933) (Central Bank for Cooperatives, Production Credit Corporations, Production Credit Associations, and Banks for Cooperatives); 48 Stat. 1222, 12 U. S. C. § 1768 (1934) (Federal Credit Unions).

[9] See House Doc. No. 216, 78 Cong., 1st sess., *Federal Contributions to States and Local Governmental Units with Respect to Federally Owned Real Estate*, pp. 39–41.

are those under R. S. 5219, referred to above. The Federal institutions affected were financial organizations whose real property would be likely to consist of their bank buildings and the land upon which the buildings were located, and any property they might take over on foreclosure—undoubtedly in the main lands and buildings without production facilities, though perhaps with "fixtures" necessary to the banking business. Inasmuch as it is almost certain that the Federal agencies would have resisted an attempt by the states to tax movable machinery under any of these statutes, we think it fair to assume that the absence of pertinent decisions means that no such attempts have heretofore been made. The cases holding fixtures and safes to be personal property are, however, quite closely in point.

Prior to 1940 the activities of the RFC were primarily financial in nature. In that year Congress authorized the RFC to organize corporations to construct and operate plants for the manufacture of war materials and to purchase critical supplies. 54 Stat. 573, 15 U. S. C. § 606b. The 1940 Act refers separately to "land", "plants", and "equipment, supplies, and machinery".[10] The

[10] The Act provides (54 Stat. 573, 15 U. S. C. § 606b):

In order to aid the Government of the United States in its national-defense program, the Corporation is authorized—

. . . . . .

(3) When requested by the Federal Loan Administrator, with the approval of the President, to create or to organize a

intimation is clear that machinery was not regarded in the same category as land and plants, but with equipment and supplies, which are unquestionably personalty. Pursuant to this statute the Defense Plant Corporation was created.

In 1941 § 10 of the RFC Act was amended. The Committee reports disclose that the amendment had two objectives: (a) To reaffirm "the original policy of the Congress with respect to such exemptions", and (b) to clarify the position of various affiliates of RFC, including Defense Plant, by providing specifically that the exemption applied to them. Sen. Rep. No. 292, House Rep. No. 514, 77th Cong., 1st sess. See also 87 Cong. Rec. 4163, 4507, 4518, 4520, 4521, which emphasized that the new Act was "simply a clarification and a positive statement of existing law" (p. 4520).

The proposed 1941 amendment added two sentences to section 10 of the 1932 RFC Act. The first stated that the Act should apply to Defense Plant Corporation, *inter alia*. The second explicitly declared that the tax exemption should be applicable to the "personal property" owned by the corporations affected.

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corporation or corporations, with power (a) to produce, acquire, and carry strategic and critical materials as defined by the President, (b) to purchase and lease land, to purchase, lease, build, and expand plants, and to purchase and produce equipment, supplies, and machinery, for the manufacture of arms, ammunition, and implements of war * * *

On the floor of the House an additional clause was added by Committee amendment. Representative Steagall, for the Committee, explained that Representative Rabaut of Michigan had called his attention to the fact (87 Cong. Rec. 4524):

> * * * that under certain circumstances real estate held under these contracts is treated as personal property in that State. The Rabaut amendment provides that where real estate, buildings, or structures are considered by the law of a State as personal property, they shall not be included in the provisions of this bill which excepts personal property from taxation.

A colloquy ensued in which it was stated by Representative Wolcott (a member of the Committee) that the law in Michigan, and elsewhere, was that "It is all a question of intent" and that buildings were "presumed to be a part of the realty until the contrary is shown". *Ibid.* An amendment was then adopted, stating that "such exemptions shall not be construed to be applicable in any State to any buildings or structures which are considered by the laws of such State to be personal property for taxation purposes." *Ibid.* The bill passed the House in that form. In conference the only pertinent change made was the elimination of the words "or structures" from the floor amendment. The conference report to the House (87 Cong. Rec. 4767) stated as to this change: "* * * There was no corresponding

provision in the Senate bill. The conference agreement retains the House provision *except that it is limited to 'buildings' instead of 'buildings or structures.'*" [Italics supplied.] In this form the bill was enacted.

The amendment shows that Congress intended buildings to be taxable irrespective of whether they were regarded as real or personal property under state law. It thus demonstrates that Congress did not mean peculiar State concepts as to "real property" to be controlling. In addition, the fact that only buildings were referred to, together with the deliberately restrictive elimination of the broader term "structures", is strong evidence that Congress assumed that only land and buildings—real property in the normal sense—was being subjected to State taxation.

Although no one of the items in the above analysis of the history of the waiver for real property would itself be conclusive, we think that taken together they indicate that Congress meant the waiver to extend only to land and buildings, and to attachments in a narrow sense. The historical use of the waiver for the real estate of financial institutions exclusively, the early cases excluding bank fixtures in the same category as the machines involved here, the absence of any other attempt during three-quarters of a century to extend the waiver beyond real estate in the narrow sense, the separate reference to "land", "plants" and

"equipment, supplies, and machinery" in the 1940 Act, the addition of an express prohibition against the taxation of personal property in the 1941 Act by way of reaffirmation of the prior understanding, and the deliberate limitation of the Michigan amendment to buildings, all point in the one direction.

B. THE PURPOSE OF THE WAIVER

That Congress has not intended its waiver of the Constitutional exemption for real property to extend to portable machinery, is confirmed by the underlying purpose of the provision. States and localities were, of course, known to be dependent upon their property taxes as their main sources of revenue. When the United States becomes owner of land in a taxing district the district's tax resources are to that extent depleted and its revenues impaired. A desire to avoid such a diminution of local tax revenues, coupled with recognition that the imposition of a tax on immovable real property by a single jurisdiction would not be likely to impose a heavy burden on the Federal Government, doubtless is the reason for the standard real property waiver provision.

When it enacted the 1941 amendment Congress was quite conscious that the rapidly expanding defense construction program would necessitate the acquisition of large amounts of land and of the effect of such acquisitions upon local revenues. See 87 Cong. Rec. 4516. And yet with this in

mind, in addition to extending the standard waiver for realty to RFC subsidiaries, Congress took the unusual course of explicitly declaring that "personal property" was not to be taxed. See p. 22, *supra*.

We believe that entirely different considerations govern the taxability of personal property, whether machinery or other materials, which the United States frequently brings into a taxing district to be used in manufacture. The exemption of such properties from taxation does not impair the local resources, since only the action of the Federal Government has brought them within the local taxing jurisdiction. On the contrary, to permit taxability would allow the states and the localities to increase their tax revenues at the expense of the United States, and to gain by the war necessities of the nation. The substantiality of this additional burden is indicated by the fact that of over seven billion dollars spent by the Defense Plant Corporation approximately four billion was invested in machinery.[1] The object of the waiver for real property was primarily to protect the localities against loss, not to enable them to take advantage of the national emergency—or indeed, apart from any emergency, to enable them to enlarge their taxable resources because of federal activities.

[1] This information has been obtained from the statistical department of the Reconstruction Finance Corporation.

Another factor differentiating portable machinery from land and buildings is the possibility of multiple taxation. As the record in this case demonstrates, machines are frequently moved from plant to plant. This might, in the absence of a uniform tax day, subject the same machinery to taxation in several jurisdictions. Limitation of the waiver to real property in itself indicates that Congress did not intend to permit any such burdensome result.

It is, of course, true that the waiver for real property permits the states to tax buildings newly constructed on federal land as well as the land itself, and that to this extent they gain from the Federal program. But land and buildings are almost uniformly regarded as real property, and the buildings, of course, are taxable only in a single district. The unquestionable legislative intention to include buildings within the waiver does not warrant a further enlargement of the class of taxable property, in a manner inconsistent with the underlying purpose of the waiver.

C. THE COMMON LAW MEANING OF "REAL PROPERTY"

For the reasons stated, we believe that the history of the statute and its purposes show that Congress intended the waiver of tax exemption for "real property" to extend only to land and buildings (including those appurtenances which are integral parts of buildings). It is also appropri-

ate, of course, to consider the normal meaning of the phrase "real property" as used in this country, inasmuch as Congress presumably legislated with that in mind.[12] We may say in advance that the court below was totally incorrect in holding that if such a test were applied the "majority rule" would treat machinery such as is involved here as real property. In our opinion, such a result could be reached only by five states other than Pennsylvania, because of unusual statutory definitions which do not apply the common law test, and in four of these states other statutory provisions exclude the property of the United States. See pp. 38–47, *infra*.

Lands and buildings, and the integral parts of buildings (whether movable or not) such as bricks, doors, windows and even keys, are uniformly regarded as real property, except where it appears that a building is not intended to be affixed to the land as a permanent structure.[13]

The problem becomes more complex when we go beyond such relatively simple situations. Courts have frequently explicitly noted the "great confu-

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[12] See the statement by Representative Wolcott, *supra*, p. 23, that the controlling factor in all the states was the intention with which the annexation was made.

[13] E. g., *Van Ness* v. *Pacard*, 2 Pet. 137; *Kinkead* v. *United States*, 150 U. S. 483, 491; 1 Thompson, *Real Property* (Perm. Ed. 1939), §§ 176, 210; Devlin, *Real Property & Deeds* (3d Ed. 1911), § 1220a; 22 Am. Jur. 778, 785.

sion" in the law of fixtures.[14] The tests that are applied, however, are substantially alike in the various states and the confusion results largely from the application of the tests to varying factual situations.

The courts almost uniformly agree that the following three factors are to be taken into consideration in determining whether a particular chattel has become real property: (1) the degree and method of annexation to the realty; (2) the appropriation, adaptation, or application to the use or purpose of the property with which the chattel is connected; and (3) the intention of the party making the annexation that it be a permanent accession to the freehold.[15]

Originally the first of these factors, annexation, was regarded as the most important.[16] The later cases, however, treat the intention of the parties

[14] Ewell, *Fixtures* (2d Ed. 1905) pp. 13–14; Thompson, *supra*, § 160; *Frost* v. *Schinkel*, 121 Neb. 784, 791; 238 N. W. 659, 663, 77 A. L. R. 1381, 1386; *Teaff* v. *Hewitt*, 1 Ohio St. 511, 523, each of which reviews the pertinent authorities. *Teaff* v. *Hewitt* is generally regarded as the leading American case on the subject of fixtures, and, despite its age, would still seem to contain the best reasoned analysis of the subject. The case deals with machinery similar to that involved in the case at bar.

[15] *Ibid.*; Thompson, *supra*, § 162; 2 Tiffany, *Real Property* (3rd ed. 1939) § 607; 1 Jones, *Mortgages* (8th ed. 1928), §§ 531–532; Ewell, *Fixtures*, pp. 27–28; Devlin, *Real Property & Deeds*, supra, § 1211.

[16] Thompson, *supra*, § 166; Ewell, *supra*, p. 14.

as the controlling criterion, with the other factors relevant to the extent that they manifest intention.[17] The intent must not be secret, of course; it is usually inferred from the other circumstances of the attachment.[18] But when the parties state their intention specifically, as by agreement, that will normally be controlling, unless other factors plainly show that the affixation is meant

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[17] Tiffany, *supra*, §§ 607–608; Thompson, *supra*, § 163; Jones, *supra*, §§ 531–532; Ewell, *supra*, pp. 30–31; *Teaff* v. *Hewitt*, *supra*, and cases cited *infra*, note 41, p. 40. Tiffany, citing decisions from 28 States, states that (§ 607): "The later cases usually regard the consideration of intention, as, in theory, the controlling one, referring to the mode of annexation and the character of the article merely as evidence upon the question of intention."

The prevailing rule is accurately and ably summarized in a recent Indiana decision (*Citizens Bank* v. *Mergenthaler Linotype Co.*, 216 Ind. 573, 581, 25 N. E. 2d 444) as follows:

"* * * The third test which concerns the intention to make or not make an article a permanent accession of the freehold is of controlling importance. The first two tests derive their chief value as evidence of such intention. The third test is made the controlling criterion by the great weight of authority, and is considered the chief test. For a chattel to be converted into a fixture the intention to make it a permanent accession must affirmatively appear. If there is any doubt of such intention, the chattel does not lose its personal property characteristics. The intention that the article shall remain personalty will be determined from the conduct, action, purpose, and relation of the parties. The intention of the parties is not always governed by what is said by them, but the intention may be determined from the nature of the article, relation and situation of the parties making the annexation, and the structure, use, and mode of annexation."

[18] Tiffany, *supra*, § 608; Thompson, *supra*, §§ 164–165.

to be permanent or unless the removal of the chattel would cause serious physical injury either to the remaining property or to the chattel itself."

There is disagreement as to the meaning of the second factor, which many courts treat as very important in the absence of any other clear manifestation of intention. Some courts, including Pennsylvania, hold a chattel "appropriate to the use of the realty" if it is a necessary part of the equipment for the business being conducted on the property.[29] But the courts generally require that

[28] Tiffany, Real Property (3d ed. 1939) § 605; 1 Thompson, *supra*, §§ 182–183; 1 Jones, *Mortgages* (8th ed. 1928) § 542; *Holt* v. *Henley*, 232 U. S. 637; *National Bank of the Republic* v. *Wells-Jackson Corp.*, 358 Ill. 356, 193 N. E. 215. An agreement may also not be binding on third parties not put on notice. Thompson, § 184; Annotation, 58 A. L. R. 1352.

[29] *E. G., Ottumwa Woolen Mill Co.* v. *Hawley*, 44 Iowa 57; *Lyle* v. *Palmer*, 42 Mich. 314, 3 N. W. 921; *Knickerbocker Trust Co.* v. *Penn Cordage Co.*, 66 N. J. Eq. 305, 58 Atl. 409, and Pennsylvania cases cited at R. 84. As to this method of defining the criterion, Tiffany states (§ 610) p. 574:

"* * * The practical efficiency of such a criterion of a fixture may well be questioned. It would but rarely occur that an article attached to land is used otherwise than in furtherance of the purpose for which the land is used. * * *".

As early as 1853 the Pennsylvania rule was criticized by Chief Justice Bartley in *Teaff* v. *Hewitt* (1 Ohio St. at 538–9), as follows:

"To what consequences would such a criterion lead, if fully carried out? A cabinet maker erects a building for a cabinet shop, and furnishes it with all the necessary machinery, implements, tools, etc., for an establishment for the manufacture of furniture, some of which may be attached to the build-

the chattel be peculiarly appropriate to the use to which the land is adapted, so that machinery installed in and adapted to a special type of factory building might be treated as realty while machinery installed in a building suitable for other types of activities, and which is not essential to the usefulness of the land is not.[21] But with few exceptions, even the courts adopting the first of

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ing. All the machinery, tools, implements, etc., whether actually attached to the building or not, and essential and necessary for the business of the establishment to which the building is adapted, and without which, it would not be a perfect and complete establishment of the kind, would be parcel of the freehold. The application of the same rule would convert the benches and essential implements of the shoemaker's shop, the vices, hammers and machinery of the coppersmith and tinner, and of other mechanics and manufacturers, into realty. And inasmuch as some carry on their business on a much larger scale than others, a question of no little difficulty would arise as to the quantity of the loose implements and machinery, which should be deemed essential to make it a complete establishment, and what might be rejected as unessential, and therefore chattels.

"It may be inconvenient to the mechanic or the manufacturer to have the movable implements and machinery in his shop taken away upon execution. The same inconvenience however, may be experienced by the agriculturist who may be prevented from putting in his crops by a similar removal of his team or farming utensils.

"Several decisions have been subsequently made in Pennsylvania, and also, in some of the other States, recognizing the doctrine of the case of *Voorhis* v. *Freeman*, but the great weight of authority both in England and in the United States, is against it."

[21] Tiffany, *supra*, § 610; Devlin, *supra*, § 1214; Jones, *supra*, § 554; *Tyaff* v. *Hewitt*, *supra*, note 20; *Hill* v. *National Bank*, 97 U. S. 450; *Hubbell* v. *East Cambridge Bank*, 132 Mass.

these interpretations of the second factor regard it as subordinate to any definite manifestation of intention that the accession is or is not intended to be permanent.[22] For the ultimate basis of the entire doctrine of fixtures rests upon the notion that the chattel has been permanently affixed to the realty.

The indefiniteness in application of the generally accepted formula is enhanced by an additional element putting across the subject. The weight given to the factors described above, and the burden of sustaining a claim depend on the relation between the parties—whether the contest is between owner and trespasser, vendor and vendee, heir or devisee and personal representative, conditional vendor of the chattel and owner or mortgage, mortgagor or mortgagee, or landlord and tenant.[23] To illustrate, articles attached to

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447; *Neufelder* v. *Third Street & Suburban R. Co.*, 23 Wash. 479, 63 Pac. 197. Jones, *supra*, states (§ 554) p. 727:

"Of the other class are movable machines used in a mill adapted to various kinds of business, which may be wholly set aside, and still the value and usefulness of the mill property would not be materially impaired. Such machinery, not being indispensable to the enjoyment of the realty, is generally considered not to be a part of it, and not to pass by a mortgage of it."

[22] *Ottumwa Woolen Mill Co.* v. *Hawley*, 44 Iowa 57; *Parsons* v. *Copeland*, 38 Me. 537, which are perhaps the leading authorities outside of Pennsylvania for this doctrine; Jones, *supra*, § 554, p. 729.

[23] Tiffany, *supra*, § 611; *Van Veis* v. *Pacard*, 2 Pet. 137; *Dudley* v. *Hurst*, 67 Md. 44, 8 Atl. 901; Thompson, *supra*, § 161.

land by the owner, or under a mortgage, might be treated as realty, while the same attachments by a tenant would remain a chattel.[24] But as the Supreme Court of Ohio explained in *Teaff* v. *Hewitt, supra*, these differences in result are not inconsistent, but reflect the intention of the parties, which varies with the relationship.[25] A tenant, for example, would be less likely to intend that his installation be permanent than an owner or mortgagor.[26]

As might be anticipated, the application of these general principles has resulted in considerable divergence in the treatment of machinery, each decision depending largely on the facts of the particular case, with special reference to the relationship between the parties.[27] Some courts still emphasize the method of attachment and hold machinery not to be a fixture if it is easily removable.[28] The Pennsylvania Supreme Court is probably correct, however, in concluding (R. 85–86) that the majority of the courts hold:

> * * *, the attachment to the land may be constructive and need not be physical

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[24] *Van Ness* v. *Pacard, supra; Kinkead* v. *United States*, 150 U. S. 483, 491.

[25] See *Teaff* v. *Hewitt*, 1 Ohio St. at 530; Tiffany, *supra*, § 611.

[26] Tiffany, *supra*, § 617.

[27] Tiffany, *supra*, § 610; Jones, *supra*, §§ 554–561; Thompson, *supra*, § 220; Devlin, *supra*, §§ 1208–1215.

[28] *Hill* v. *Wentworth*, 28 Vt. 428; *Bartlett* v. *Wood*, 32 Vt. 372; Tiffany, *supra*, § 609, p. 570 and cases cited; Devlin, *supra*, § 1209.

to the extent that removal will result in serious damage to the remaining freehold.

In particular, many cases hold that small, portable parts of heavier attachments which are unquestionably fixtures necessarily share that status.[29]

But that by no means disposes of the present case, as the court below seemed to assume. Even though a machine which can be removed without physical injury is not thereby precluded from being treated as a fixture, it does not follow that all machinery thereby becomes real property. Indeed, the general rule is, if anything, to the contrary. See pp. 29–33, *supra*. If we assume that machinery is necessary to the business being conducted on the property, and that accordingly the second requisite is fulfilled in the states construing that factor most broadly, there still remains to be considered the element of intention. In substantially all of the states an intention that machinery not be a permanent accession, whether manifested by explicit statement or by other facts (of which easy removability is one), will still be recognized

[29] *Southern Cotton Oil Co.* v. *Lowery*, 231 Ala. 119, 163 So. 629; *Fechet* v. *Drake*, 2 Ariz. 239, 12 Pac. 694; *Atlantic Refining Co.* v. *Feinberg*, 31 Del. 183, 112 Atl. 685; *J. & H. Day Co.* v. *Public Sav. Ins. Co.*, 85 Ind. App. 78, 151 N. E. 361; *Dudley* v. *Hurst*, 67 Md. 41, 8 Atl. 901; *Anderson* v. *Perpetual B. & L. Association*, 172 Md. 94, 190 Atl. 747; *Thomsen* v. *Cullen*, 196 Wis. 581, 219 N. W. 439.

as controlling.[30] The states differ to some extent in the emphasis placed upon other factors when intention is not clearly shown, not upon the significance of manifested intention.[31] Indeed, many Pennsylvania decisions which do not appear to have been overruled, and some of which are cited with approval by the court below (R. 84 (n)), do not disregard the intention of the parties as a factor to be considered.[32] A series of decisions in the Federal courts in that State purport to summarize the state law—perhaps inaccurately in view of the decision below, but certainly with ample support in the Pennsylvania authorities—as establishing a presumption that machinery indispensable to the operation of a plant is intended to be permanent, with the presumption rebuttable by a

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[30] See notes 15, 17, 19, 25, supra, pp. 29-31, 34, and notes 41, 42, *infra*, pp. 40-41. For Federal cases see *Willis* v. *Beeler*, 90 F. 2d 538 (C. C. A. 6); *Petition of Johns-Manville Sales Corp.*, 88 F. 2d 520 (C. C. A. 6); *In re Voight-Prost Brewing Co.*, 115 F. 2d 733 (C. C. A. 6); *In re Theo. A. Kochs Co.*, 120 F. 2d 803 (C. C. A. 7); *Bergh* v. *Herring-Hall-Marvin Safe Co.*, 136 Fed. 368 (C. C. A. 2); *Brown* v. *Reno Electric Light & Power Co.*, 55 Fed. 229 (C. C., Nev.); *W. U. Tel. Co.* v. *Burlington & S. W. Ry. Co.*, 11 Fed. 1, 7 (C. C. Iowa) and cases cited in note 33, p. 37, *infra*.

[31] Cf. *Ottumwa Woolen Mill Co.* v. *Hawley*, *supra*; *Thomsen* v. *Cullen*, *supra*, with *Hubbell* v. *East Cambridge Bank*, 132 Mass. 447; *McRea* v. *Central Nat. Bk.*, 66 N. Y. 489; *Teaff* v. *Hewitt*, 1 Ohio St. 511; Thompson, § 220, pp. 366-367.

[32] *Hill* v. *Seward*, 53 Pa. 271; *Vail* v. *Weaver*, 132 Pa. 363, 19 Atl. 138; *Donnelly* v. *Frick & Lindsay Co.*, 207 Pa. 597, 57 Atl. 60; *Wickes Bros.* v. *Island Park Association*, 229 Pa. 400, 78 Atl. 934; *McClintock & I. Co.* v. *Aetna Explosives Co.*, 260 Pa. 191, 103 Atl. 622; *American Laundry*

showing of a contrary intention unless the plant is usable only for the single purpose.[33] In *McConnell* v. *Chelton Trust Co.*, 282 Fed. 105, the Circuit Court of Appeals for the Third Circuit had held that machinery for the manufacture of war munitions installed in a plant previously and still in part devoted to manufacturing printing press machinery was not real property because not intended to be permanently installed; the case was subsequently distinguished on the ground of lack of permanence, but was not disapproved, in one of the leading Pennsylvania authorities cited by the court below.[34]

We have analyzed the Pennsylvania authorities not for the purpose of challenging the Pennsylvania Supreme Court on the law of that State,

Mach. Co. v. *Miners' Trust Co.*, 307 Pa. 395, 161 Atl. 306; *Clayton* v. *Lienhard*, 312 Pa. 433, 437, 167 Atl. 321 and cases cited; *Ross* v. *Fairy Silk Mills*, 334 Pa. 305, 310-311, 5 A. 2d 569; *Commonwealth Trust Co.* v. *Harkins*, 312 Pa. 402, 408, 167 Atl. 278; *Pennsylvania Chocolate Co.* v. *Hershey Bros.*, 316 Pa. 292, 296-297, 175 Atl. 694. See Notes, 87 Univ. of Pa. L. Rev. 995 (1939), and 90 *Id.* 77 (1941), for discussions of the Pennsylvania law. The note last cited stated (p. 82) that "in accord with the majority of American jurisdictions the Pennsylvania court uses the 'intention' test as the criterion of a fixture."

[33] *In re Highland Silk Co.*, 41 F. 2d 404 (E. D. Pa.); *In re Highland Silk Co.*, 41 F. 2d 405 (C. C. A. 3); *Union Building Co.* v. *Pennell*, 78 F. 2d 959, 965-966 (C. C. A. 3); *Kennedy* v. *Crumlish*, 85 F. 2d 665 (C. C. A. 3); *In re American Pile Fabrics Co.*, 85 F. 2d 961 (C. C. A. 3).

[34] *Pennsylvania Chocolate Co.* v. *Hershey Bros.*, 316 Pa. 292, 299, 175 Atl. 694.

but in order to show that Congress would not have been forewarned that Pennsylvania law was as different from that of the other states as it now appears to be. Under the present decision the entire determination as to whether a machine is real property rests on its usefulness to the enterprise carried on in a plant, a test which would invariably convert all machinery into realty. Although only the method of annexation (the first factor) has been explicitly discarded as a test by the Pennsylvania court, the opinion also completely ignores the third factor, the clearly manifested intention of the parties, and accordingly would seem to treat that factor too as irrelevant.

We know of no other state which so completely departs from the general rule for determining whether particular chattels become part of the realty. It is impossible, of course, to read all of the mass of cases on fixtures in the 48 States. In addition to our study of leading cases and recognized works on the subject, we have examined the 29 cases cited by the Pennsylvania Supreme Court (R. 86) in support of its statement (R. 86, 88) that its position was in accord with that of the majority of States. We think it fair to use these cases to test the proposition, although the selection by the Pennsylvania court does not purport to list the leading authorities taking a different

position, and accordingly cannot be regarded as a typical sampling of the cases.[35]

Many of these cases do hold that the method of annexation to the realty is not controlling.[36] But in a large number of them the same result would have been reached on any theory, either because the machinery involved could not easily be removed,[37] or because the case concerned the portable parts of securely attached structures,[38] or because the machines were specially fitted to the particular use for which the building was

[35] The Pennsylvania court cites Ohio as illustrative of the rule that "only 'slight' attachment is required" (R. 86), and refers to *Holland Furnace Co.* v. *Trumbull Sav. & Loan Co.*, 135 Ohio St. 18, 19 N. E. 2d 273, which involved a furnace in a residence. But since *Teaff* v. *Hewitt*, 1 Ohio St. 511 (1853), *supra*, pp. 31-32n, Ohio has expressly refused to follow the Pennsylvania doctrine. For the most recent cases, which involve the taxation of machinery, see: *Zangerle* v. *Standard Oil Co.*, 144 Ohio St. 506, 60 N. E. 2d 52; *Standard Oil Co.* v. *Zangerle*, 144 Ohio St. 523, 60 N. E. 2d 59; *Zangerle* v. *Republic Steel Corp.*, 144 Ohio St. 529, 60 N. E. 2d 170.

[36] E. g. *Ottumwa Woolen Mill Co.* v. *Hawley*, 44 Iowa 57; *Cary Hardware Co.* v. *McCarty*, 10 Colo. App. 200, 50 Pac. 744; *Metropolitan Life Ins. Co.* v. *Jensen*, 9 N. W. 2d 140 (S. D.); *Parsons* v. *Copeland*, 38 Me. 537, *Commercial Fin. Co.* v. *Brooksville Hotel Co.*, 98 Fla. 410, 123 So. 844; *Merchants' National Bank* v. *Stanton*, 55 Minn. 211, 56 N. W. 821; *Dudley* v. *Hurst*, 67 Md. 44, 8 Atl. 901; *Anderson* v. *Perpetual B. & L. Ass'n.*, 172 Md. 94, 190 Atl. 747.

[37] *Southern Cotton Oil Co.* v. *Lowery*, 231 Ala. 119, 163 So. 629; *Fechet* v. *Drake*, 2 Ariz. 239, 12 Pac. 694; *Atlantic Refining Co.* v. *Feinberg*, 31 Del. 183, 112 Atl. 685; *J. & H. Day Co.* v. *Public Sav. Ins. Co.*, 85 Ind. App. 78, 151 N. E. 361; *Thomson* v. *Cullen*, 196 Wis. 581, 219 N. W. 439; *Dudley* v. *Hurst*, 67 Md. 44, 8 Atl. 901; *Anderson* v. *Perpetual B. & L. Ass'n.*, 172 Md. 94, 190 Atl. 747.

adapted [39] or because intent was otherwise clearly shown."[40]

The opinions in 27 of the 29 cases definitely indicate that the intention of the parties is the controlling, or at least an important, criterion.[41]

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[39] *Fechet* v. *Drake*, 2 Ariz. 239, 12 Pac. 694; *Humes* v. *Higman*, 145 Ala. 215, 40 So. 128; *J. & H. Day Co.* v. *Public Sav. Ins. Co.*, 85 Ind. App. 78, 151 N. E. 361; *Green* v. *Chicago R. I. & P. R. R.*, 8 Kan. App. 611; *Cunningham* v. *Cureton*, 96 Ga. 489, 23 S. E. 420; *Parsons* v. *Copeland*, 38 Me. 537; *Metropolitan Life Ins. Co.* v. *Kimball*, 163 Ore. 31, 94 P. 2d 1101; *McRea* v. *Central Nat. Bk.*, 66 N. Y. 489.

[40] *Atlantic Refining Co.* v. *Feinberg*, 31 Del. 183, 112 Atl. 685; *Seedhouse* v. *Broward*, 34 Fla. 509, 16 So. 425; *Southbridge Sav. Bank* v. *Mason*, 147 Mass. 500, 18 N. E. 406; *Commercial Credit Corp.* v. *Commonwealth Mortgage Co.*, 276 Mass. 335, 177 N. E. 88; *McRea* v. *Central Nat. Bk.*, 66 N. Y. 489; *Pocahontas Coal & Coke Co.* v. *By-Products Pocahontas Co.*, 112 W. Va. 390, 164 S. E. 504; *Metropolitan Life Ins. Co.* v. *Kimball*, 163 Ore. 31, 94 P. 2d 1101.

[41] *Humes* v. *Higman*, 145 Ala. 215, 40 So. 128; *Southern Cotton Oil Co.* v. *Lowery*, 231 Ala. 119, 163 So. 629; *Fechet* v. *Drake*, 2 Ariz. 239, 12 Pac. 694; *Teater* v. *Good Hope Development Corp.*, 14 Cal. 2d 196, 93 P. 2d 112; *Cary Hardware Co.* v. *McCarty*, 40 Colo. App. 200, 50 Pac. 744; *Atlantic Refining Co.* v. *Feinberg*, 31 Del. 183, 112 Atl. 685; *Commercial Fin. Co.* v. *Brooksville Hotel Co.*, 98 Fla. 410, 123 So. 814; *Seedhouse* v. *Broward*, 34 Fla. 509, 16 So. 425; *Cunningham* v. *Cureton*, 96 Ga. 489, 23 S. E. 420; *J. & H. Day Co.* v. *Public Sav. Ins. Co.*, 85 Ind. App. 78, 151 N. E. 361; *Ottumwa Woolen Mill Co.* v. *Hawley*, 44 Iowa 57; *Parsons* v. *Copeland*, 38 Me. 537; *Dudley* v. *Hurst*, 67 Md. 44, 8 Atl. 901; *Anderson* v. *Perpetual B. & L. Assn.*, 172 Md. 94, 190 Atl. 747; *Southbridge Sav. Bank* v. *Mason*, 147 Mass. 500, 18 N. E. 406; *Commercial Credit Corp.* v. *Commonwealth Mortgage Co.*, 276 Mass. 335, 177 N. E. 88; *Detroit Trust Co.* v. *Detroit City Service Co.*, 262 Mich. 14, 247 N. W. 76; *Merchants' National Bank* v. *Stanton*, 55 Minn. 211, 218, 56 N. W. 821; *Planters Mfg. Co.* v. *Greenwood Agency*, 168 Miss. 892,

And where this does not appear clearly in the particular case cited, other decisions in the same State show adherence to the general rule in this respect.[12] None of the jurisdictions referred to by the Pennsylvania court support it in rejecting as irrelevant all manifestations of intention that the machines were not to be permanently affixed, or in giving consideration exclusively to the usefulness of the machines to the business enter-

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152 So. 476; *Knickerbocker Trust Co.* v. *Penn Cordage Co.*, 66 N. J. Eq. 305, 58 Atl. 409; *McRea* v. *Central Nat. Bk.*, 66 N. Y. 489; *Foote* v. *Gooch*, 96 N. C. 265, 1 S. E. 525; *Metropolitan Life Ins. Co.* v. *Kimball*, 163 Ore. 31, 94 P. 2d 1101; *Metropolitan Life Ins. Co.* v. *Jensen*, 9 N. W. 2d 140 (S. D.); *Danville Holding Corp.* v. *Clement*, 178 Va. 223, 16 S. E. 2d 345; *Pocahontas Coal & Coke Co.* v. *By-Products Pocahontas Co.*, 112 W. Va. 390, 164 S. E. 504; *Thomsen* v. *Cullen*, 196 Wis. 581, 219 N. W. 439.

[12] The two cases out of the 29 which do not appear to recognize the importance of intention are early Kansas and Michigan decisions. For subsequent cases in those states applying the general rule, see *Bromick* v. *Burkholder*, 98 Kan. 261, 158 Pac. 63; *L. & M. Mercantile Co.* v. *Wimer*, 94 Kan. 573, 577, 146 Pac. 1162; *Colton* v. *Michigan Lafayette Building Co.*, 267 Mich. 122, 255 N. W. 433; *Sequist* v. *Fabiano*, 274 Mich. 643, 265 N. W. 488. For cases in other states included in the Pennsylvania Supreme Court's list, see: *Southern Cal. Tel. Co.* v. *State Board*, 12 Cal. 2d 127, 131–135, 82 P. 2d 422; *Bank of America National Association* v. *LaReine Hotel Corp.*, 108 N. J. Eq. 567; *Newark* v. *Weyerhaeuser Timber Co.*, 18 N. J. M. 560 (St. Bd. Tax App.); *Citizens Bank* v. *Mergenthaler Linotype Co.*, 216 Ind. 573, 25 N. E. 2d 444; *Nigro* v. *Hatch*, 2 Ariz. 144; *Love* v. *Union Central Life Insurance Co.*, 168 Miss. 408, 150 So. 794. In addition, for New Hampshire, which is usually cited as adopting the Pennsylvania rule, see *Graton & Knight Mfg. Co.* v. *Woodworth-Mason Co.*, 69 N. H. 177; *Langdon* v. *Buchanan*, 62 N. H. 657.

prise. And it is to be remembered that at least one member of the House Committee specifically adverted to intent as the controlling factor. See p. 23, *supra*.

There can, we think, be no question as to the proper decision in this case, if any of the standard tests for determining the status of fixtures be applied. Appellant's machinery, although necessary to the manufacture of airplane propellers, was not firmly fastened to the building but was easily removable, without injury to either the machinery or the plant. Although this is not by any means controlling, it is a factor to be taken into consideration. Even apart from the provision in the lease which specifically states that the machinery shall remain personalty (R. 14, *supra*, pp. 8–9), which ordinarily would be conclusive, the lease itself shows that the parties contemplated that the machinery was not to be a permanent accession to the realty, for it expressly authorizes the lessee to use the machines in other plants and to lend them to other suppliers (R. 18–19). The manner in which the plant was operated further demonstrates that both as a matter of intention and in fact the machines were not a part of the realty. This appears from the fact that machines were constantly being moved in and out, rearranged, replaced and transferred to other plants without injury to themselves or the building.

Under the interpretation of the second factor as including as fixtures only machines necessary to the use to which the land and building is specially adapted, the same result would be reached, for this machinery was not peculiarly adapted for this building. The building could (R. 37):

> * * * do almost any manufacturing type of job which has to be done, excepting something that requires a special type of building. * * *

And the machines were attached by simple plugged-in electrical connections in order that the flexibility necessary to "keep up with changes and developments" in propeller manufacturing would not be impeded (R. 35). Thus, only under the interpretation of the second factor as covering all machinery necessary to the operation of a business in a plant would any one of the three factors suggest that the machinery here was a fixture. And the cases giving effect to that factor almost uniformly—outside of Pennsylvania at the present time—recognize that any contrary manifestation of intention, such as clearly appears here, would be controlling.[43]

Up to this point we have discussed the subject of fixtures generally without reference to the tax laws of the various states, although we recognize that this is a tax case. We have adopted that

[43] See notes 22, 30, 31, pp. 33, 36, *supra*.

course because the relatively few "tax cases apply the standard formula, and because Congress presumably used the term "real property" in its customary sense and was not merely as it might be employed in state tax cases.

It is true that almost every state has a statute defining "real property" or "real estate" for purposes of taxation.[45] But in 31 of the states the statutory definition merely expresses the common law rule for determining what chattels are to be treated as real property.[46] Typical statutes define real property as including "lands, tenements and hereditaments";[47] lands, "buildings, structures

[44] The paucity of tax cases may be explained by the fact that in the many states in which real and personal property are taxed alike, it is of no consequence where the line is drawn between them.

[45] Wyoming has no definition. See Wyo. Rev. Stat. 1931, § 115–108. Mississippi merely defines lands as including "all corporeal hereditaments whatever or any interest therein." Miss. Code Ann. (1942), § 677. Arizona declares that real estate shall mean and include "the ownership of, or claim to, or possession of, or right of possession to, any land or patented mine," and that "real estate and the improvements thereon shall be assessed separately." Ariz. Code Ann. (1939) § 73–202. The statutes in the other states are more specific.

[46] In addition to the statutes cited in notes 47–51, *infra*, see Ky. Rev. Stat. 1942, § 134.010 (lands and improvements).

[47] Alabama Code of 1940, Title 1, § 2; Rev. Code of Delaware 1935, c. 1, § 1; N. J. Rev. Stat. 1937, Title 1, c. 1, § 1:1–2; New Mexico Stat. Ann. 1941, § 75–101; Michie's Tenn. Code of 1938, § 15; West Virginia Code of 1943, Ann., § 33 (p).

and improvements, and other fixtures,"[48] lands and buildings or structures,[49] or lands, buildings and fixtures.[50] Some of the statutes which in substance do no more than reaffirm the common law test specifically refer to the necessity of "permanent" attachment.[51] We do not read these variations in phraseology as establishing different tests, or as departing from the common law doctrine, and the courts have not so treated them. The courts, in construing these statutes, have sometimes held machinery to be real property and sometimes not, but the decisions apply the accepted rules, and give controlling weight to those factors indicating that the machine was or was

[48] Arkansas—Pope's Digest 1937, § 13358; Colorado Stat. Ann. 1935, c. 142, § 17; Florida Stat. 1941, § 192.02; Idaho Code Ann. 1932, §§ 61–108, 110; Kansas Gen. Stat. 1935, c. 79, §§ 79–102; Mason's Minnesota Stat. 1927, § 1977; Montana Rev. Code 1935, c. 182, § 1996; Nebraska Comp. Stat. 1929, c. 77, § 102; Page's Ann. Ohio Gen. Code, § 5322; Vernon's Texas Civ. Stat. Art. 7146; Utah Code Ann. 1943, § 80-3-1; Remington's Rev. Stat. Wash. Ann., § 11108; Wisconsin Stat. 1943, § 70.03.

[49] Maine Rev. Stat. 1944, c. 81, § 3; S. C. Code of Laws 1942, § 2577; Louisiana Gen. Stat. 1939, § 8200.

[50] Burns Rev. Indiana Stat. 1933, § 64–104; Mass. Gen. Laws 1932, c. 59, § 3; Michigan Stat. Ann. 1935, Title 7, § 7.2.

[51] Deering's California Codes (Revenue and Taxation) §§ 104–5; Illinois Rev. Stat. 1944, c. 120, § 42 (10); North Carolina Code of 1939, § 7971 (105) (30); North Dakota Revised Code of 1943, §§ 57-0204, 47-0104; South Dakota Code 1939, §§ 57.0312, 51.0104.

not intended to be a permanent accession to the land.[52]

In 15 states the statutes are specific as to whether machinery is to be subject to the real property tax. In Georgia, Maryland, Minnesota, Nevada, New York, Oklahoma and Virginia movable machinery is expressly classified separately from realty.[53] In Rhode Island and Vermont engines and machines furnishing heat and motive power are treated as real estate while other types of machinery are taxable as personal property.[54] In Iowa, Missouri, New Hampshire, Connecticut, Oregon and parts of Pennsylvania (by judicial interpretation) machinery is declared to be subject to the real prop-

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[52] *Newport News* v. *Warwick County*, 159 Va. 571, 603–4, 166 S. E. 570; *Southern Cal. Tel. Co.* v. *State Board*, 12 Cal. 2d 127, 134–5, 82 P. 2d 422; *Zangerle* v. *Standard Oil Co.*, 141 Ohio St. 506, 69 N. E. 2d 52; *Standard Oil Co.* v. *Zangerle*, 141 Ohio St. 523, 60 N. E. 2d 59; *Zangerle* v. *Republic Steel Corp.* 141 Ohio St. 529, 60 N. E. 2d 170; *State ex rel Gisholt M. Co.* v. *Norsing*, 168 Wis. 442, 169 N. W. 429; *State* v. *Bodden*, 172 Wis. 64, 178 N. W. 242; *Newark* v. *Weyerhaeuser Timber Co.*, 18 N. J. M. 360, 561–565 (St. Bd. Tax App.); *Newport Illuminating Co.* v. *Assessors*, 19 R. I. 632, 36 Atl. 426; *Detroit United Ry.* v. *State Tax Com'rs*, 136 Mich. 96, 103, 98 N. W. 997; cf. *Patterson* v. *Delaware County*, 70 Pa. 381.

[53] Georgia Code 1933, Title 85, §§ 201, 405, 1701; Maryland Code 1939, Art. 81, §§ 1 (12), 7 (23); Laws of Minnesota, 1943, c. 472; Nevada Comp. Laws Supp. 1931–1941, § 6419; N. Y. Cons. Laws (Tax Law), §§ 2, 3, 219L; Oklahoma Stat. 1941, Title 68, § 15.3; Virginia Code Ann. 1942, App. (Tax Code) § 73.

[54] Rhode Island Gen. Laws, c. 309, § 9; Vermont Pub. Laws 1933, §§ 32, 584, 586, 29, 611.

city tax,[55] although a 1943 Iowa statute expressly excepts machinery owned by the United States,[56] Missouri excepts "lands the property of the United States;"[57] Connecticut "property belonging to * * * the United States,"[58] and New Hampshire "real estate of the United States * * * used for public purposes."[59] Indeed, it should be noted that as of April 1, 1943, 40 states exempted the property of the United States from taxation.[60]

It thus appears that for purposes of taxation as well as generally, the court below was clearly wrong in concluding that the majority of states

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[55] Iowa Code 1939, § 6977; Missouri Rev. Stat. 1939, § 11211; New Hampshire Rev. Laws of 1942, c. 73, §§ 7, 8, 9; Conn. Gen. Stat. Supp. 1934–1935; § 30fe; Oregon Comp. Laws Ann. 1940, Title 110, § 102; Purdon's Pennsylvania Stat. Ann., Title 72, § 5020–201.

[56] Iowa Acts 1943, c. 210, which reads as follows: "The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment."

[57] Mo. Const. 1945, Art. III, § 43 (in 28 Mo. Rev. Ann. Stat. (pocket supp.), p. 25).

[58] Conn. Gen. Stat. 1930, § 1163 (1).

[59] New Hampshire Rev. Laws 1942, c. 73, § 7.

[60] The provisions of the state constitutions and statutes to this effect are collected in the Brief for the United States in *United States* v. *County of Allegheny*, October Term 1943, No. 417, pp. 33–34n.

would hold machinery such as is here involved to be taxable as real property. On the contrary, we believe that the 33 states applying the general rule in tax cases would not come to that conclusion on the facts in this record (which would apply to a major part of the machinery owned by Defense Plant Corporation), inasmuch as the understanding that the machines were not to be permanently affixed is so plainly shown. Only in the five states whose statutes are explicit that machinery is subject to the real property tax and in portions of Pennsylvania could a different result be reached, and in four of the five (Iowa, Missouri, Connecticut and New Hampshire) special statutes preclude the taxing of machinery owned by the United States.[a]

D. THE INTENTION OF CONGRESS AS TO THE MEANING OF "REAL PROPERTY" AND AS TO THE EFFECT TO BE GIVEN LOCAL LAW

We believe that our review of the history of the statute, its objectives, and the accepted meaning of "real property" show what Congress intended by the real property waiver. The history and purpose of the Act strongly suggest that only land and buildings were to be made taxable (pp. 17–27, *supra*); "buildings" would, of course, include such fixtures as are essential to a build-

[a] See notes 56–59, *supra*. In Wisconsin, where machinery has been held taxable as real property (*State ex rel. Gisholt M. Co.* v. *Norsman*, 168 Wis. 442, 169 N. W. 429), a statute excluding "all machinery" but not the "real property" of the United States, has been enacted. Wis. Laws 1943, c. 59, Wis. Stat. 1943, § 70.11 (1a).

ing's operations, such as for example, the heating plant. But if we assume that Congress intended to permit application of the general rule as to when machinery is to be treated as affixed to the realty, the result would be the same.

For portable machines, which can be removed without damage to the lands or buildings, and which, as shown both by express agreement and by the physical facts, were intended from their installation to be transferable to other plants and not to be permanent accessions to the land and building in which they were installed, are not real property under the established and well-recognized principles applied almost universally throughout the country. When Congress used the phrase "real property" it did not have in mind a concept broader than the accepted meaning of the term. Certainly the existence of a few state statutes and decisions classifying machinery with real property for tax purposes does not show a different intention on the part of Congress. States may define terms as they see fit and may tax anything over which they have jurisdiction as real property if they like. Such a classification may mean only that as a matter of policy and convenience a state legislature believes it advisable to impose the same taxes on certain tangible chattels as are imposed on land, not that it regards those chattels as real estate. Nor is the situation any different when a state court construes the words "mill or manufactory"

in a local statute to include all machinery in a plant. A state could, as the Pennsylvania court has in this case, define real property to include electric trucks, or even all motor vehicles used in the operation of a business. But Congress obviously did not mean such departures from the normal standard to determine the scope of the Federal statute.

The considerations discussed indicate not only what Congress meant by real property but also that Congress did not intend the application of the phrase to be dependent upon the law of the state—or in Pennsylvania, of the particular taxing district—in which the land is located. We submit that Congress had its own conception as to what property was being subjected to state taxation. As this Court stated in *Jerome* v. *United States*, 318 U. S. 101, 104:

> At times it has been inferred from the nature of the problem with which Congress was dealing that the application of a federal statute should be dependent on state law. Examples under federal revenue acts are common. *Douglas* v. *Willcuts*, 296 U. S. 1; *Helvering* v. *Stuart*, 317 U. S. 154, and cases cited. But *we must generally assume, in the absence of a plain indication to the contrary, that Congress when it enacts a statute is not making the application of the federal act dependent on state law.* That assumption is based on the fact that the application of federal legislation

> is nationwide (*United States* v. *Pelzer*, 312 U. S. 399, 402) and at times on the fact that the federal program would be impaired if state law were to control. *Seaboard Air Line Ry.* v. *Horton*, 233 U. S. 492, 503: * * * [Italics supplied.]

As the *Jerome* case points out, the normal presumption is that Congress intends its laws to operate in a uniform manner throughout the nation, and the burden is on the person who seeks to prove the contrary. In a great many different situations this Court has held that it is up to the Federal courts to define the terms used in Federal statutes, even with respect to expressions having a meaning under local law. *Carpenter* v. *Shaw*, 280 U. S. 363; *Lyeth* v. *Hoey*, 305 U. S. 188, 194; *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 122–123; *United States* v. *Pelzer*, 312 U. S. 399, 402–403; *Morgan* v. *Commissioner*, 309 U. S. 78, 81; *Commissioner* v. *Tower*, No. 317, decided February 25, 1946. *Cf. S. F. A. Inc.* v. *Minnesota*, No. 254, decided March 25, 1946, slip opinion, p. 5; *United States* v. *County of Allegheny*, 322 U. S. 174, at 183; *Clearfield Trust Co.* v. *United States*, 318 U. S. 363; *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 296; *D'Oench, Duhme & Co.* v. *Federal Deposit Insurance Corporation*, 315 U. S. 447; *Holmberg* v. *Armbrecht*, No. 505, decided February 25, 1946. In *Carpenter* v. *Shaw*, *supra*, the question was whether a state tax on oil and gas royalties was a tax on land or on

personalty. By Federal statute Indian "lands" were to be non-taxable, a situation almost exactly the converse of that here although presenting the same problem. The Court held that it was not bound by the state's characterization of its own tax, saying (280 U. S. at 367–368):

> Where a federal right is concerned we are not bound by the characterization given to a state tax by state courts or legislatures, or relieved by it from the duty of considering the real nature of the tax and its effect upon the federal right asserted. * * *

The fact that the Federal statute embodies a common law term does not mean that the Court is unable to determine its content independently of the law of the particular state. Most of the above cases fell in that category. The Court will be guided in its determination by all clues to the Congressional intention; if these are not sufficiently clear, and if the phrase employed by Congress has a common law connotation, the Court may "resort to all of the source materials of the common law" in fashioning an answer. See Jackson, J., concurring in *D'Oench, Duhme & Co.* v. *Federal Deposit Insurance Co.*, 315 U. S. at 469.

Nothing in the background, history or language of the RFC Act rebuts the normal presumption that Section 10 is to be given a uniform nation-wide interpretation irrespective of state law. We do not believe that Congress intended to permit

portable machinery to be exempt from taxation in Pennsylvania cities of the first class,[42] and in Ohio, for example, but to be taxed in other parts of Pennsylvania. If there should be doubts as to the construction of the Act on that score, they should be resolved in favor of tax exemption. For, in addition to the presumption in favor of national uniformity, this Court has stated that a waiver of the tax immunity of the United States "must be clear, and every well-grounded doubt upon the subject should be resolved in favor of the exemption". *Austin* v. *The Aldermen*, 7 Wall. 694, 699. *Cf. Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 99–100.

In support of the contention that state law must govern, appellee has relied on cases in which this Court has held state property law controlling when no Federal statute was in issue. *Waggoner Estate* v. *Wichita County*, 273 U. S. 113; *Edward Hines Yellow Pine Trustees* v. *Martin*, 268 U. S. 458; *Erie R. Co.* v. *Tompkins*, 304 U. S. 64. But we are not here concerned with any such proposition. The different considerations governing such cases and those involving federally created rights were recently noted in *Holmberg* v. *Albrecht*, No. 505, decided February 25, 1946. See also *S. R. A. Inc.* v. *Minnesota, supra.*

Reference has also been made to cases in which the lower federal courts have ruled that for pur-

[42] In Pennsylvania cities of the second class, the county may, but the city may not, tax machinery (R. 88).

poses of condemnation "real property" obtains its content by reference to the local law. (*United States* v. *Becktold Co.*, 129 F. 2d 473 (C. C. A. 8); *United States* v. *19.86 Acres*, 141 F. 2d 344 (C. C. A. 7); this Court has made a similar statement in *United States ex rel. TVA* v. *Powelson*, 319 U. S. 266, 279. But see *United States* v. *Miller*, 317 U. S. 369, 379. Condemnation, however, is a subject as to which the federal courts have traditionally followed the local law in many respects; indeed, it is still the one major field in which the federal courts still adhere to local procedure. See 40 U. S. C. § 258, F. R. C. P. Rule 81 (a) (7). In this setting decisions allowing the local law to govern in condemnation cases do not warrant a similar rule for determining the limits of a Congressional waiver of the federal tax immunity. *Cf. S. R. A. Inc.* v. *Minnesota*, *supra*; *United States* v. *County of Allegheny*, 322 U. S. 174, at 183.

Appellee argues that the words of the Act show that Congress intended that "real property" be given its local connotation in each state or taxing district. Emphasis is placed on the words "any", "to the same extent", and "other" in the clause waiving the Federal exemption. But certainly the phrases "*any* real property" and "*other* real property", whether taken separately or together, do not cast any light on the meaning of "real property", or indicate that it is to be given a special local rather than a uniform national con-

tent. Nor does the fact that the waiver permits federal real property to be taxed "to the same extent according to its value as other real property" do more than provide for parity of treatment between Federal and other realty; it leaves completely open the question as to what constitutes "real property" within the meaning of the waiver. The language in question is the standard formula generally utilized in exemption and exemption waiver provisions for various Federal instrumentalities, and is found alike in provisions which confine the tax privilege to real property and in provisions extending the privilege to both real and personal property. See note 78, p. 20, *supra*.

Appellee also contends that the purpose of the waiver requires that the local law be given effect. The stated purpose is said to be the removal of "the normal immunity of appellant's property from local taxation". (Statement Opposing Jurisdiction, p. 5), and to require Defense Plant to pay its share of the local tax burden. But the object was to abrogate the immunity in order to prevent depletion of local tax revenues; that was the reason for limiting the waiver to real property, as we have shown. See pp. 25–27, *supra*. The existence of such a purpose can hardly be regarded as manifesting a preference for a local determination as to what property is covered by the waiver. To give the local law full sway in defining real property would enable the locality to override

the express Congressional declaration that only real property and not personal property be taxable.

It has been argued that not to follow the local law would, to some extent, require the state courts to look to the meaning of a Federal statute and also might transfer the problem from the state to the Federal courts. Insofar as the states seek to tax property of the Federal Government, it would seem entirely proper for them to look to Federal law, and although there would be the possibility of resort to the Federal courts, no reason has been presented as to why it is objectionable to permit the Federal courts to pass upon the scope of the immunity from taxation of the property of the Federal Government. See *S. R. A. Inc.* v. *Minnesota, supra*, slip sheet pp. 3, 5. That the burden on the Federal courts will not be severe is indicated by the fact that this is the first time in 80 years that any substantial difference of opinion has arisen between a State and the nation as to the meaning of the standard real property exception from the immunity rule. If Pennsylvania's effort to apply its peculiar doctrine is defeated and the principles which seemingly have guided the other states in this field reaffirmed, we doubt that the Federal courts will have any more difficulty in the future on this question than they have had in the past.

Furthermore, even if it be assumed *arguendo* that to some extent Congress may have intended

to let local law govern, we submit that this would be true only within the limits of the normal conception of real property. We doubt that even appellee could seriously contend that if guns or fuel oil or blankets or pencils or feathers or helium were included within a local definition of real property, it would have to be treated as realty under the Federal statute. At most Congress could have intended local law to apply so long as it did not transcend the bounds of the general understanding as to the meaning of real property with which Congress was familiar. The Pennsylvania doctrine applied in this case, whereby neither the method of annexation, nor the intention of the parties—as manifested by acts or by words—nor the frequent removal of the machinery, nor the lack of relationship between the particular machinery and the usefulness of the land and buildings is regarded as relevant, is a wide departure from the accepted definition of realty, and, we submit, not within the limits of the Congressional standard.

Accordingly, we conclude that (1) Congress did not intend the local law to determine the content of the phrase "real property" in the Federal statute, and (2) Whether Congress meant that the waiver of the tax exemption be narrowly confined to lands and buildings, or that fixtures as they have long been known in American law be included, machinery such as is described in the record in this case is not subject to state taxation.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

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